IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

WP(C).No. 37130 of 2004(T)

AGAINST THE ORDER IN IA 361/2004 IN
MOP.2/2004 of PRINCIPAL SUB COURT, PALAKKAD

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PETITIONER:

V.RAJAKUMARAN,
VARAMBALLAM HOUSE, KALLEKKADU P.O.,
PALAKKAD.

BY ADV. SRI.MURALI PURUSHOTHAMAN
SRI.P.M.BENZIR
SRI.DEEPU LAL MOHAN

RESPONDENTS:

BABY, CHAKKATHUPARA HOUSE,
PALLATHERI, PUTHUSSERY VILLAGE, PALAKKAD.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 37130/04)

PETITIONER'S EXTS.:

EXT.P1: THE PHOTOCOPY OF THE REPLY NOTICE DT. 28.6.2003 SENT BY THE RESPONDENT TO THE PETITIONER.

EXT.P2: THE PHOTOCOPY OF M.O.P.NO.2/2004 FILED BY THE PETITIONER ON 15.11.2003 BEFORE THE HON'BLE SUB COURT, PALAKKAD.

EXT.P3: THE PHOTOCOPY OF I.A.NO.361/04 FILED BY THE RESPONDENT IN M.O.P.NO.2/04.

EXT.P4: THE PHOTOCOPY OF THE ORDER DATED 2.6.04 PASSED BY THE HON'BLE SUB COURT, PALAKKAD IN I.A.NO.361/04 IN M.O.P.NO.2/2004.

PIUS C. KURIAKOSE,J.

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W.P.(C)No.37130 of 2004

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Dated: 23rd May, 2007

JUDGMENT

Ext.P4 order passed by the Subordinate Judge's Court, Palakkad in I.A.No.361/2004 in M.O.P.No.2/2004 directing the petitioner who is the husband of the respondent and father of a child by name 'Roshin' is under challenge invoking the supervisory jurisdiction of this court under Article 227 of the Constitution. Under the impugned order I.A.No.361/04 filed by the respondent seeking a direction against the petitioner for payment of a sum of Rs.2000/- per mensem to the respondent as monthly maintenance and a further sum of Rs.750/- per mensem to the child stands allowed in full. On 2.6.2004 the I.A. stood posted for filing of counter. On that day there was no representation for the respondent and the learned Subordinate Judge noticing that there was no representation and that no counter has been filed, allowed the application after setting the respondent absent and ex parte.

2. In this court though notice of the Writ Petition was served on the respondent, she has not chosen to enter appearance and resist the Writ Petition. This court became inclined to stay the execution proceedings only on condition that the petitioner deposits a sum of Rs.5000/-. Mr.Deepu Lal Mohan, learned counsel for the petitioner

submits that the above condition was complied with by the petitioner. He would submit that the petitioner is not solely to be blamed for his non-appearance on 2.6.2004. According to him, the Advocate engaged by him to defend him for reasons best known to him did not inform the petitioner about the day to day proceedings in the case. The said Advocate has been changed and a new counsel has been engaged now.

3. Having regard to the above submissions and other grounds raised in the Writ Petition, I am of the view that Ext.P4 can be set aside and the petitioner can be granted an opportunity to contest the matter on its merits, however on terms. Ext.P4 accordingly will stand set aside if the petitioner pays to the respondent either directly or through counsel appearing for her in the court below a further amount of Rs.5000/- by cash towards the child's maintenance within three weeks from today. Upon payment being made as above, Ext.P4 will stand set aside and the court below will dispose of I.A.No.361/04 in accordance with law at the earliest subject to the further condition that the petitioner will file counter, if any, within three weeks of his receiving copy of this judgment.

The Writ Petition is allowed as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**